

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 22, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEVIN C.,

Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF
SOCIAL SECURITY,¹

Defendant.

No. 4:20-CV-05162-JAG

ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
REMANDING FOR ADDITIONAL
PROCEEDINGS

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 17, 19. Attorney D. James Tree represents Devin C. (Plaintiff); Special Assistant United States Attorney Ryan Lu represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS IN PART** Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

¹ Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

JURISDICTION

Plaintiff filed an application for Supplemental Security Income on March 22, 2018, alleging disability since July 13, 2017, due to chronic fatigue syndrome, severe abdominal pain (epigastric), anxiety, irritable bowel syndrome, allergies, vitamin deficiency, chronic nausea, hearing loss, iron deficiency, and dysmenorrhea. Tr. 151-52. The application was denied initially and upon reconsideration. Tr. 173-76, 180-82. Administrative Law Judge (ALJ) Stewart Stallings held a hearing on September 30, 2019, Tr. 76-104, and issued an unfavorable decision on October 17, 2019, Tr. 21-33. Plaintiff requested review of the ALJ's decision by the Appeals Council and the Appeals Council denied the request for review on July 30, 2020. Tr. 1-6. The ALJ's October 2019 decision is the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on September 16, 2020. ECF No. 1.

STATEMENT OF FACTS

Plaintiff was born in 1981 and was 36 years old when she filed her application. Tr. 32. She has a high school education and at the time of her hearing she was working on her Associate's degree one class at a time. Tr. 80. She has a minimal work history, having last worked in 2006 at a movie theater. Tr. 318. She has alleged disabling pain, nausea and IBS symptoms, particularly each month during her menstrual period. Tr. 81-82, 85, 864, 1112.

STANDARD OF REVIEW

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error.

1 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
 2 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
 3 1098. Put another way, substantial evidence is such relevant evidence as a
 4 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
 5 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one
 6 rational interpretation, the Court may not substitute its judgment for that of the
 7 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,
 8 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the
 9 administrative findings, or if conflicting evidence supports a finding of either
 10 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*
 11 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision
 12 supported by substantial evidence will be set aside if the proper legal standards
 13 were not applied in weighing the evidence and making the decision. *Browner v.*
 14 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

15 SEQUENTIAL EVALUATION PROCESS

16 The Commissioner has established a five-step sequential evaluation process
 17 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*
 18 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant
 19 bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d
 20 at 1098-1099. This burden is met once a claimant establishes that a physical or
 21 mental impairment prevents the claimant from engaging in past relevant work. 20
 22 C.F.R. § 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ
 23 proceeds to step five, and the burden shifts to the Commissioner to show (1) the
 24 claimant can make an adjustment to other work; and (2) the claimant can perform
 25 specific jobs that exist in the national economy. *Batson v. Commissioner of Social*
 26 *Sec. Admin.*, 359 F.3d 1190, 1193-1194 (9th Cir. 2004). If a claimant cannot make
 27 an adjustment to other work in the national economy, the claimant will be found
 28 disabled. 20 C.F.R. § 416.920(a)(4)(v).

ADMINISTRATIVE FINDINGS

On October 17, 2019, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act. Tr. 21-33.

At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity since the application date. Tr. 24.

At step two, the ALJ determined Plaintiff had the following severe impairments: abdominal pain/irritable bowel syndrome (IBS) with nausea; dysmenorrhea; chronic fatigue; anxiety; somatic disorder, and heavy metal toxicity. *Id.*

At step three, the ALJ found Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments. Tr. 25-27.

The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found she could perform a range of sedentary work, with the following limitations:

She can lift up to ten pounds occasionally; stand or walk for up to 2 hours in an eight-hour workday, and sit for up to 8 hours in an eight-hour workday with normal breaks. She can frequently climb ramps and stairs. She can occasionally climb ladders, ropes, or scaffolds. She can occasionally stoop. She can frequently crouch, kneel, or crawl. She should avoid anything more than occasional use of dangerous moving machinery or exposure to unprotected heights. She should be limited to a low stress job, defined as not requiring the worker to cope with work related circumstances that could be dangerous to the worker or others. Specifically, she should not perform production pace conveyer belt type-work, or management type-work. She should further be limited to routine and repetitive work type tasks, which could be complex in nature. Further, the claimant would need a predictable work environment with only occasional simple workplace changes.

Tr. 27.

At step four, the ALJ found Plaintiff had no past relevant work. Tr. 32.

1 At step five the ALJ found that, considering Plaintiff's age, education, work
2 experience and residual functional capacity, Plaintiff could perform jobs that
3 existed in significant numbers in the national economy, specifically identifying the
4 representative occupations of receptionist and dispatcher. Tr. 32-33.

5 The ALJ thus concluded Plaintiff was not under a disability within the
6 meaning of the Social Security Act at any time from the date the application was
7 filed through the date of the decision. Tr. 33.

8 ISSUES

9 The question presented is whether substantial evidence supports the ALJ's
10 decision denying benefits and, if so, whether that decision is based on proper legal
11 standards.

12 Plaintiff contends the Commissioner erred by (1) improperly rejecting
13 Plaintiff's subjective complaints; and (2) improperly rejecting medical opinion
14 evidence.

15 DISCUSSION

16 1. Plaintiff's subjective statements

17 Plaintiff contends the ALJ erred by improperly rejecting her subjective
18 complaints. ECF No. 17 at 5-9.

19 It is the province of the ALJ to make determinations regarding a claimant's
20 subjective statements. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).
21 However, the ALJ's findings must be supported by specific, cogent reasons.
22 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant
23 produces medical evidence of an underlying medical impairment, the ALJ may not
24 discredit testimony as to the severity of an impairment merely because it is
25 unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.
26 1998). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting
27 the claimant's testimony must be "specific, clear and convincing." *Smolen v.*
28 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834

1 (9th Cir. 1996). “General findings are insufficient: rather the ALJ must identify
2 what testimony is not credible and what evidence undermines the claimant’s
3 complaints.” *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.
4 1993).

5 The ALJ concluded Plaintiff’s medically determinable impairments could
6 reasonably be expected to cause the alleged symptoms; however, Plaintiff’s
7 statements concerning the intensity, persistence and limiting effects of those
8 symptoms were not entirely consistent with the medical evidence and other
9 evidence in the record. Tr. 28. The ALJ found Plaintiff’s complaints were
10 unsupported by the objective findings and found that her routine course of
11 treatment was effective. Tr. 28-29.

12 Plaintiff argues the ALJ improperly rejected her subjective complaints based
13 on the objective findings alone, and made factual errors in his summary of the
14 objective evidence. ECF No. 17 at 5-9. Defendant argues the ALJ reasonably
15 interpreted the medical records as unsupportive of Plaintiff’s complaints and
16 permissibly found the routine, conservative care effectively controlled her
17 conditions, and that Plaintiff inexplicably failed to follow recommended treatment.
18 ECF No. 19 at 3-8.

19 The Court finds the ALJ failed to offer clear and convincing reasons for
20 disregarding Plaintiff’s subjective complaints. An ALJ may cite inconsistencies
21 between a claimant’s testimony and the objective medical evidence in discounting
22 the claimant’s symptom statements. *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d
23 1219, 1227 (9th Cir. 2009). But this cannot be the only reason provided by the
24 ALJ. *See Lester*, 81 F.3d at 834 (the ALJ may not discredit the claimant’s
25 testimony as to subjective symptoms merely because they are unsupported by
26 objective evidence); *see Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001)
27 (Although it cannot serve as the sole ground for rejecting a claimant’s credibility,
28 objective medical evidence is a “relevant factor in determining the severity of the

1 claimant's pain and its disabling effects."'). The ALJ summarized Plaintiff's
2 records and noted a number of normal findings regarding her physical and mental
3 status. Tr. 28-29. The Court finds the ALJ's summary of the treatment records and
4 finding that the objective evidence did not support Plaintiff's subjective complaints
5 is an insufficient basis on its own for discounting Plaintiff's reports.

6 To the extent the ALJ implied Plaintiff's course of treatment was "routine"
7 and helped control her symptoms, there is no indication that Plaintiff's conditions
8 were subject to any more aggressive treatments, or that she experienced any lasting
9 relief of her symptoms or improvement to the point of being able to work. Tr. 867,
10 871, 1064, 1066. Dr. Karlson indicated that Plaintiff's conditions continued to
11 impair her, despite extensive workups and consults with specialists. Tr. 1116. Dr.
12 Rawlins noted treatment had helped "a little," but that Plaintiff's response was
13 inconsistent over time, and that some days she felt much better than others. Tr.
14 1121. Therefore, the Commissioner's argument that the ALJ reasonably found
15 Plaintiff's conservative treatment to be effective is not supported by substantial
16 evidence.

17 Defendant further indicates Plaintiff's subjective complaints were not
18 reliable because she failed to follow through with dietary treatment
19 recommendations for her heavy metal toxicity. ECF No. 19 at 6-7. The ALJ did not
20 rely on this fact in discussing why he found Plaintiff's reports unreliable.
21 Therefore, the Court will not consider this rationale. *See Orn v. Astrue*, 495 F.3d
22 625, 630 (9th Cir. 2007) (The Court will "review only the reasons provided by the
23 ALJ in the disability determination and may not affirm the ALJ on a ground upon
24 which he did not rely."').

25 On remand, the ALJ will reconsider Plaintiff's subjective complaints.
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1 **2. Medical opinions**

2 Plaintiff argues the ALJ erred in evaluating the medical opinion evidence.
3 ECF No. 17 at 9-18. She argues the ALJ improperly rejected the opinions from
4 Drs. Marks, Karlson, and Rawlins. *Id.*

5 For claims filed on or after March 27, 2017, new regulations apply that
6 change the framework for how an ALJ must weigh medical opinion evidence.
7 *Revisions to Rules Regarding the Evaluation of Medical Evidence*, 2017 WL
8 168819, 82 Fed. Reg. 5844 (Jan. 18, 2017); 20 C.F.R. § 416.920c. The new
9 regulations provide the ALJ will no longer give any specific evidentiary weight to
10 medical opinions or prior administrative medical findings, including those from
11 treating medical sources. 20 C.F.R. § 416.920c(a). Instead, the ALJ will consider
12 the persuasiveness of each medical opinion and prior administrative medical
13 finding, regardless of whether the medical source is an Acceptable Medical Source.
14 20 C.F.R. § 416.920c(c). The ALJ is required to consider multiple factors,
15 including supportability, consistency, the source's relationship with the claimant,
16 any specialization of the source, and other factors (such as the source's familiarity
17 with other evidence in the file or an understanding of Social Security's disability
18 program). *Id.* The regulations make clear that the supportability and consistency of
19 the opinion are the most important factors, and the ALJ must articulate how they
20 considered those factors in determining the persuasiveness of each medical opinion
21 or prior administrative medical finding. 20 C.F.R. § 416.920c(b). The ALJ may
22 explain how they considered the other factors, but is not required to do so, except
23 in cases where two or more opinions are equally well-supported and consistent
24 with the record. *Id.*

25 Supportability and consistency are further explained in the regulations:

26 (1) *Supportability*. The more relevant the objective medical evidence
27 and supporting explanations presented by a medical source are to
28 support his or her medical opinion(s) or prior administrative medical

1 finding(s), the more persuasive the medical opinions or prior
2 administrative medical finding(s) will be.

3 (2) *Consistency*. The more consistent a medical opinion(s) or prior
4 administrative medical finding(s) is with the evidence from other
5 medical sources and nonmedical sources in the claim, the more
6 persuasive the medical opinion(s) or prior administrative medical
7 finding(s) will be.

8 20 C.F.R. § 416.920c(c).

9 *a. Dr. Marks*

10 Plaintiff attended a consultative psychological exam for Washington State
11 Department of Social and Health Services in February 2018 with Dr. N.K. Marks.
12 Tr. 998-1003. Dr. Marks diagnosed Plaintiff with somatic symptom disorder and
13 opined she would have primarily mild to moderate impairment in work-related
14 functions, but would be markedly impaired in being aware of normal hazards and
15 taking appropriate precautions and in setting realistic goals and planning
16 independently. Tr. 1000.

17 The ALJ found this opinion was not persuasive, noting it was not supported
18 by Dr. Marks' cursory evaluation with lack of explanation to support the
19 limitations and the almost entirely unremarkable mental status exam. Tr. 30. The
20 ALJ further found the opinion was inconsistent with the longitudinal medical
21 record showing minimal mental health treatment and generally unremarkable
22 mental status findings. *Id.*

23 Plaintiff argues the ALJ erred in failing to explain what he found to be
24 cursory about Dr. Marks' exam, noting that it included a mental status exam,
25 clinical interview, and review of a prior assessment. ECF No. 17 at 11. She further
26 argues that while some of the mental status findings were normal, others were
27 abnormal, and those abnormal findings support the opinion. *Id.* at 12. Finally, she
28 argues the opinion is consistent with other opinions in the file indicating disabling

1 limitations. *Id.* at 13. Defendant argues the ALJ's rationale was sufficient, and
2 Plaintiff merely offers an alternative interpretation of the evidence. ECF No. 19 at
3 12. Defendant additionally asserts that any error on the part of the ALJ was
4 harmless at most, as the only marked limitations assessed by Dr. Marks are
5 accounted for in the RFC. *Id.* at 10-11.

6 The Court finds any error was harmless as the RFC accounts for the
7 limitations Dr. Marks assessed.² However, as this claim is being remanded for
8 further proceedings, the ALJ shall reconsider the medical evidence in completing
9 the five-step analysis.

10 *b. Dr. Karlson*

11 Plaintiff's treating doctor, Katie Karlson completed a disability verification
12 form for DSHS in February 2018, in which she noted Plaintiff had moderate to
13 severe limitations at various times, stemming from chronic fatigue, IBS, anxiety,
14 painful menstrual periods, and abdominal/epigastric pain. Tr. 1005. She opined
15 Plaintiff was severely limited and unable to meet the demands of sedentary work.
16 Tr. 1006. Doctor Karlson also completed a medical source statement for Plaintiff's
17 disability claim in 2019 in which she noted Plaintiff needed to lie down during the
18 day, that full-time work would cause her condition to deteriorate, and that she
19 would be likely to miss four or more days of work per month. Tr. 1074-75.

20 The ALJ found these opinions to not be persuasive, noting Plaintiff's reports
21 of only mild anxiety symptoms, typically normal mental status presentation, and
22 lack of counseling. Tr. 31. The ALJ further noted Plaintiff's completely
23 unremarkable physical exam the day Dr. Karlson completed the paperwork, and
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25
26 ² As the ALJ found this opinion to not be persuasive, it would appear that
27 the ALJ interpreted the opinion as assessing limitations greater than those the ALJ
28 ultimately included in the RFC. On remand, the ALJ should clarify his position.

1 found the opinion was inconsistent with the longitudinal record showing
2 conservative treatment and few objective signs of impairment on exam. *Id.*

3 The Court finds the ALJ did not err. The more relevant the objective medical
4 evidence and supporting explanations presented and the more consistent an opinion
5 is with the longitudinal record, the more persuasive it will be. The ALJ reasonably
6 considered the most important factors of consistency and supportability, and
7 reasonably interpreted the records in finding Dr. Karlson's opinion to be
8 inconsistent with the lack of objective findings on her own exam and throughout
9 the record. However, as this claim is being remanded on other bases, the ALJ will
10 reconsider all of the medical evidence, including any additional evidence that may
11 be presented upon remand.

12 *c. Dr. Rawlins*

13 Plaintiff's treating gynecologist, Dr. Rawlins, completed a medical source
14 statement in May 2019 in which he noted Plaintiff needed to lie down during the
15 day due to extreme fatigue and would be likely to miss four or more days of work.
16 Tr. 1076-77.

17 The ALJ found this opinion to not be persuasive because it appeared to be
18 overly reliant on Plaintiff's subjective complaints and unsupported by objective
19 clinical exam findings. Tr. 31. The ALJ further noted that the longitudinal record
20 did not describe Plaintiff as lethargic or fatigued, despite her subjective complaints.
21 Tr. 32.

22 Plaintiff argues there was no basis for the ALJ to conclude that the opinion
23 was more based on Plaintiff's subjective reports than on Dr. Rawlins' professional
24 judgments and clinical observations, and also reiterates that the ALJ improperly
25 rejected Plaintiff's subjective complaints. ECF No. 17 at 17-18. Defendant argues
26 the ALJ's reasoning is supported by substantial evidence, and that the ALJ
27 reasonably considered the supportability and consistency of the opinion. ECF No.
28 19 at 15-16.

1 The Court finds the ALJ reasonably considered the factors of supportability
2 and consistency, and that his interpretation of the record was reasonable. However,
3 as this claim is being remanded for further proceedings, the ALJ will reconsider
4 the opinion evidence, along with any additional evidence submitted on remand.

5 CONCLUSION

6 Plaintiff argues the decision should be reversed and remanded for the
7 payment of benefits. The Court has the discretion to remand the case for additional
8 evidence and findings or to award benefits. *Smolen v. Chater*, 80 F.3d 1273, 1292
9 (9th Cir. 1996). The Court may award benefits if the record is fully developed and
10 further administrative proceedings would serve no useful purpose. *Id.* Remand is
11 appropriate when additional administrative proceedings could remedy defects.
12 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court
13 finds that further development is necessary for a proper determination.

14 The ALJ's decision is not supported by substantial evidence. On remand, the
15 ALJ shall reevaluate Plaintiff's subjective complaints and the medical evidence of
16 record, making findings on each of the five steps of the sequential evaluation
17 process, obtain supplemental testimony from a vocational expert as needed, and
18 take into consideration any other evidence or testimony relevant to Plaintiff's
19 disability claim.³

20 Accordingly, **IT IS ORDERED:**

21 1. Plaintiff's Motion for Summary Judgment, **ECF No. 17**, is
22 **GRANTED IN PART.**

23
24 ³ Though not raised by the parties, the Court also takes note that the step five
25 findings consisted of semi-skilled jobs without the ALJ making any finding that
26 Plaintiff has acquired skills that are transferrable to semi-skilled work, in violation
27 of Ninth Circuit caselaw. *See Barnes v. Berryhill*, 895 F.3d 702 (9th Cir. 2018). On
28 remand, the ALJ should take care to make legally sufficient step five findings.

1 2. Defendant's Motion for Summary Judgment, **ECF No. 19**, is
2 **DENIED**.

3 3. The matter is **REMANDED** to the Commissioner for additional
4 proceedings consistent with this Order.

5 4. An application for attorney fees may be filed by separate motion.

6 The District Court Executive is directed to file this Order and provide a copy
7 to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and
8 the file shall be **CLOSED**.

9 **IT IS SO ORDERED.**

10 DATED March 22, 2022.



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James A. Goetze

JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE